

Review of Court Rules in Statutes

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**The Florida House of Representatives
Marco Rubio, Speaker**

**Safety & Security Council
Dick Kravitz, Chair**

**Courts Committee
Dennis Ross, Chair**

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Executive Summary

For the 2007 interim, the Committee on Courts was asked to review the Florida Statutes for references to various rules of court. The committee examined the statutes to find such references, and found 160 statutes with rule references. The committee found numerous concerns in those references that may warrant legislative action. Those concerns can generally fall in one of the following categories:

- Reference to incorrect specific rule
- Reference to incorrect set of court rules
- Unnecessary reference to court rules

Of the 160 statutes, 96 are recommended for amendment.

Review of Court Rules in Statutes

For the 2007 interim, the Committee on Courts was asked to review the Florida Statutes for references to various rules of court. The committee first examined the statutes to find such references, and found 160 statutes with rule references. References were to the following rule provisions:

Number of Statutory References to Court Rules	
Appellate	6
Civil Procedure	95
Criminal Procedure	32
Family Law	5
Federal	3
Judicial Administration	1
Juvenile	25
Probate	28
Small Claims	5
<i>total references</i>	200 ¹

Any use of a reference in statutes to an outside source creates the potential for a number of potential concerns. The primary concerns are:

Reference concern

This is an uncommon but serious concern found in a few statutes. A few of the statutes that actually reference a specific rule number appear to reference the wrong rule, or fail to reference all of the rules that appear to be related to the subject of the statute.

Reference to wrong set of rules

This is a common concern, often in statutes related to family law proceedings. For instance, many statutes related to family law proceedings still reference the rules of civil procedure, which rules formerly governed family law proceedings. Such statutes have not been updated to recognize the family law rules of procedure that were first adopted in 1996. In a few instances, this difference is significant.

Incomplete reference to rules

This was a fairly prevalent concern. Indeed, many rule references in the statutes fall into this category. For instance, a reference to the rules of civil procedure is incorrect where

¹ Many statutes contained multiple references, which is why the number of references exceeds the number of statutes affected.

the amount in controversy is less than \$5,000 and the case falls under the small claims rules. A reference to the rules of civil procedure is also incorrect as some civil matters are governed by the family court rules, rules of juvenile procedure, or probate rules. A reference to the rules of criminal procedure may be incorrect if a juvenile is the offender, as the rules of juvenile procedure would apply, and may also be incorrect where the case is governed by the traffic court rules.

Unnecessary reference to rules

This is also a common issue in the statutes and is commonly related to an incomplete reference to the rules. For instance, many statutes creating a civil cause of action include a sentence that says, in effect, that the complaint must be filed under the rules of civil procedure. At first glance, this is obvious and does not need to be said. Whether or not the statute requires this, a plaintiff will have to file his or her complaint in proper form under the rules of civil procedure, or the court will dismiss the action. Of course, this statutory reference can lead to great confusion if a plaintiff takes this literally and tries to file a standard civil complaint in the small claims court. Similarly, criminal law statutes sometimes require compliance with the rules of criminal procedure, which rules the court will enforce with or without the statutory requirement.

Solutions to Rule Concerns

Where appropriate, the recommended solution is to simply remove all reference to court rules. Many such references appear unnecessary. Where the entire reference cannot be removed without changing the context of the statute, the recommended solution is to reference the general term "court rules" rather than the specific section of rules. A simple reference using the term "court rules" cures any concern related to incorrect or incomplete reference to a specific set of court rules.

There remain many provisions that should not be amended. At the top of that list are certain criminal sentencing statutes that reference a now-repealed sentencing court rule. In that defendants are still occasionally being arrested and tried for offenses that still fall under the rule, the statutory reference must remain. There are also many instances where reference to a specific set of rules is appropriate to the context and should remain. For instance, different court rules direct different means by which services of process is effective. Statutes that create procedures to follow before a case may be filed appropriately references rules of procedure for service of process. Finally, it appears prudent to leave a rules reference that is preceded by a phrase similar to "except as otherwise provided by this statute, the _____ rules apply," as such statutes appear to be a policy decision by the legislature creating exceptions to the rules of procedure.